

Plaintiffs' Appendix of Summary Judgment Evidence

Exhibit 2

FLOOR MAINTENANCE DATA SHEET

1. Parties to this Agreement:

"Target" Target Stores, Division of Target Corporation,
a Minnesota corporation

Stores: T-0019, T-0043, T-0044,
T-0045, T-0046, T-0063, T-0218,
T-1204, T-1785

"Contractor" Jim's Maintenance and Sons, Inc.
a Corporation

2. Store Locations: See Schedule 1 attached to this Data Sheet

3. Rates: See Schedule 1 attached to this Data Sheet

4. Term of this Agreement:

Commences on July 09, 2000
Expires on July 08, 2003

5. Payment address: Jim's Maintenance and Sons, Inc.
P. O. Box 1251
Choctaw, OK 73020

6. Notice Address: Contractor

Jim's Maintenance and Sons, Inc.
18611 N.E. 23rd Street
Harrah, OK 73045

Billing Address: Target

Target Stores
555 Republic Drive, Suite 500
Plano, TX 75074

Att: Building Services

Phone: 800-826-7492 Fax: 800-606-7492

7. Address for Insurance Certificate

Target Stores
3701 Wayzata Boulevard
Minneapolis, MN 55416
Attn: Building Services Administration TFS-7C-N

8. Discount for Early Payment:

Target may elect to take a discount of 0 % for payment made within 0 days of receipt of Contractor's invoice.

9. Contract Documents: The terms of this Agreement consists of this Data Sheet (including Schedule 1 attached hereto), the attached Terms and Conditions, and the following Exhibits:

- Exhibit A - Floor Maintenance Specifications
- Exhibit C - Not Applicable
- Attachment to Exhibit A - Optional Services Rider
- Exhibit D - Certification Statement
- Exhibit B - Security Guidelines
- Exhibit E - Not Applicable

Date Agreement Was Printed: January 05, 2001

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TARGET STORES, DIVISION OF
TARGET CORPORATION

By: Debra M. Larson
Name: Debra M. Larson
Title: Mgr. Bldg Svcs
Date: 1-30-2001

CONTRACTOR:
JIM'S MAINTENANCE AND SONS, INC.

By: Bryan Funderburgh
Name: Bryan Funderburgh
Title: President
Date: 1-13-2001

EXHIBIT

P/F 2
1/2/07 N. Gisch

Schedule 1 to Floor Maintenance Data Sheet

05-Jan-01

Store Name	Frequency of Service	Base Fee - Basic Services	Base Fee - Carpet Extraction	Floor System (i.e. S.C. Johnson, Bunters, etc.)	Party Supplying Floor/Carpet Cleaning Chemicals	Maximum Chemical Budget	Beginning Date for Service	Optional Services
T-19 Tulsa 1701 South Yale Tulsa, OK 74112-	7 days/ week	\$10,144.33 Month		S.C. Johnson's Signature	Target	\$7,292.00 /yr.	02/04/2001	
T-43 Oklahoma City N 5400 North May Ave. Oklahoma City, OK 73112-	7 days/ week	\$8,298.33 Month		S.C. Johnson's Signature	Target	\$8,550.00 /yr.	02/04/2001	
T-44 Oklahoma City S 800 S.W. 44th Street Oklahoma City, OK 73109-	7 days/ week	\$8,831.33 Month		S.C. Johnson's Signature	Target	\$8,050.00 /yr.	02/04/2001	
T-45 Midwest City 7691 East Reno Midwest City, OK 73110-	7 days/ week	\$7,652.66 Month		S.C. Johnson's Signature	Target	\$8,050.00 /yr.	02/04/2001	
T-46 Norman 2417 West Main St. Norman, OK 73069-	7 days/ week	\$8,073.00 Month		S.C. Johnson's Signature	Target	\$7,350.00 /yr.	02/04/2001	
T-63 Woodland Hills 7178 So. Memorial Dr. Tulsa, OK 74133-	7 days/ week	\$8,970.00 Month		S.C. Johnson's Signature	Target	\$7,350.00 /yr.	02/04/2001	

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JIMS MAINTENANCE AND SONS, INC.

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05-Jan-01

Store	Name	Frequency of Service	Base Fee - Basic Services	Base Fee - Carpet Extraction	Floor System (i.e. S.C. Johnson, Butcher, etc.)	Party Supplying Rooter/Carpet Cleaning Chemicals	Maximum Chemical Budget	Beginning Date for Service	Optional Services
T-218	Quail Springs 2201 W. Memorial Road Oklahoma City, OK 73134-	7 days/ week	\$8,952.66 Month		S.C. Johnson's Signature	Target	\$7,350.00 /yr.	02/04/2001	
T-1204	SAN ANTONIO 8234 Agora Parkway Selma, TX 78154	7 days/ week	\$9,338.33 Month		S.C. Johnson's Signature	Target	\$7,500.00 /yr.	07/09/2000	
T-1785	San Antonio W 11311 Bandera Rd San Antonio, TX 78250	7 days/ week	\$19,321.25 Month		S.C. Johnson's Signature	Target	\$12,000.00 /yr.	02/01/2001	

PRICE INCLUDES ALL TAXES

Target Stores

Contractor

HM139824106

JIMS MAINTENANCE AND SONS, INC.

By *Robert Johnson* Its *Manager*

By *Barbara Funderburg* Its *President*

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TERMS AND CONDITIONS

1. Services. During the term of this Agreement, Contractor agrees to perform the Services described in attached Exhibit A (hereinafter the "Services"), for the Target store locations listed in the Data Sheet as and when requested by Target, and to provide all tools, labor, supervision and products necessary to perform the Services.
2. Termination. Unless sooner terminated in accordance with the terms of this Agreement, this Agreement shall have an initial term as set forth in the Data Sheet and shall thereafter be extended on a month to month basis until terminated at any time by either party by giving written notice to the other party not less than thirty (30) calendar days prior to the effective date of the termination. The foregoing notwithstanding, this Agreement may be terminated by Target without cause at any time during the initial term by giving thirty (30) days prior written notice to Contractor. If this Agreement relates to more than one Target store location, the party terminating this Agreement pursuant to this paragraph may specify in its notice the particular stores to which the notice of termination relates, and this Agreement shall terminate as to those stores and continue as to the remaining stores.

This Agreement may be also terminated by Target for cause at any time in the event Contractor, in Target's sole reasonable opinion, fails to perform or otherwise breaches this Agreement. Such failure or breach may include, but not be limited to, any failure on the part of Contractor to provide any of the Services when scheduled, any failure on the part of Contractor to provide a sufficient number of adequately trained personnel to perform Services when scheduled, or any failure on the part of employees or agents of Contractor to observe applicable Target regulations. Such termination for cause shall be effective upon the earlier of the date of receipt by Contractor of the notice of termination or a date which is three (3) business days from and after the date of mailing of said notice of termination. If this Agreement relates to more than one Target store location, Target may, at Target's option, terminate this Agreement for cause as provided in this paragraph either in its entirety as to all locations, or only as to those locations for which a default or breach has occurred as designated in the notice of termination. Target shall specify in its notice the stores to which the notice of termination relates, and this Agreement shall terminate as to those stores and continue as to the remaining stores.

Target's sole obligation to Contractor upon termination of this Agreement shall be to pay Contractor for such Services as Contractor can document, to the satisfaction of Target, were actually provided prior to the date of termination in accordance with this agreement, less any amounts due and payable by contractor to Target hereunder.

3. Payment. Target will pay Contractor for the Services at the rate(s) specified in the Data Sheet. Target pays from invoice only and no amount shall be payable by Target hereunder until Contractor has complied with the payment procedures set forth in attached Exhibit A, or with such other reasonable procedures as Target may designate in writing. Invoices shall be submitted to the billing address set forth in the Data Sheet and shall be accompanied by such backup documentation as Target may reasonably require. Target will pay proper invoices within thirty (30) days after receipt. If applicable, Target may deduct from the amount of an invoice the amount of the discount for early payment specified in the Data Sheet or any amount due and payable by contractor to Target hereunder. In no event shall

Contractor deliver invoices or will Target be obligated to pay invoices for Services not actually provided prior to the invoice date. Target shall have the right upon thirty (30) days prior notice, to audit Contractor's books and records as they relate to the Services provided by Contractor pursuant to this Agreement.

In addition, Target shall have the right to fine Contractor an amount up to \$1,000 for any breach by Contractor of its obligations hereunder, which breach may subject Target to a fine or penalty under any applicable governmental authority, rule or regulation. In the event a building alarm is negligently or accidentally triggered by Contractor or its employee or agent, Contractor shall pay all of Target's out-of-pocket costs and administrative expenses in connection therewith, including a minimum administrative charge of \$100. Contractor understands the foregoing amounts payable to Target have been agreed to in view of the difficulty in determining Target's actual costs and damages because of difficulties in apportioning the costs of personnel responding to such alarms and the fact that Target's alarm vendors and public authorities have different policies, procedures and thresholds in connection with false alarms and with violations of rules and regulations.

4. Independent Contractor. By this Agreement, Target and Contractor intend to create an independent contractor relationship. As such, Target is interested only in the results of Contractor's performance and not the specific method or manner of performance. Therefore, while Contractor agrees to perform the Services in accordance with and to Target's standards and specifications, Contractor retains sole and exclusive control over the method and manner in which the Services are performed. All Services performed pursuant to this Agreement are subject to Target's right of inspection and must meet with Target's approval. All personnel of Contractor used to perform Services under this Agreement shall be employees of Contractor and not of Target. Contractor shall comply with all applicable federal, state and local laws regarding compensation, eligibility and conditions of employment. Contractor shall, at the commencement of the term and from time to time as may be required by Target, to provide a notarized Certification Statement to Target in writing that all employees of Contractor and any subcontractor working on Target premises are properly documented to legally work in the United States. The form of certification is attached to this Agreement as Exhibit D. Contractor shall have a similar process to ensure that all agents, servants, independent contractors or anyone else related to the contractor for the contractor's obligations under this contract have been documented to legally work in the United States.

Contractor shall pay all federal, state and local payroll, social security, unemployment and other taxes, contributions and premiums required to be withheld or paid with respect to its employees, and shall file all returns incident to such taxes, contributions and premiums. Target shall have no obligation to provide Contractor or any of Contractor's employees with any employee benefits provided for employees of Target. Contractor may not claim benefits from Target under applicable workers' compensation laws for injuries sustained by Contractor or its employees while providing the Services.

Contractor shall have no right to purchase goods or services in the name of Target, execute or make contracts in the name of Target, or obligate Target in any way. Contractor is not an agent or employee of Target and cannot represent itself as such. Expenses incurred by

Contractor in the performance of this Agreement shall be reimbursed only if approved by Target in writing prior to being incurred by Contractor.

In the event any court or administrative tribunal or agency with appropriate jurisdiction determines that an employment relationship has been or will be established by the performance of this Agreement, this Agreement shall immediately cease and Contractor shall reimburse and indemnify Target for expenses of any nature, including, but not limited to, tax withholding and insurance claims in the nature of unemployment compensation and/or workers' compensation, imposed by any level of government.

5. **Compliance with Law.** Contractor shall comply with all federal, state and local government laws, regulations and requirements applicable to the Contractor's performance under this Agreement, including applicable federal or state OSHA regulations and guidelines, and applicable regulations governing the use, clean-up and disposal of materials used in providing Services (including requirements relating to the provision of material safety data sheets). Contractor shall procure and maintain at its sole expense all necessary permits and licenses for the conduct of its business. In the event of an allegation that Contractor has failed to comply with any law, regulation or requirement, or failed to obtain any permit or license, Contractor shall pay any fines or penalties imposed upon Target and shall reimburse Target for any expenses (including attorneys' fees) incurred by Target in responding to such allegation.
6. **Warranties and Guarantees.** Contractor warrants and guarantees that the Services (a) shall be provided in a professional and workmanlike manner, (b) shall be performed by adequately-trained and competent personnel, all of whom are familiar with Target's operations, and (c) shall meet all industry standards applicable to the Services. Contractor further warrants and guarantees that its employees will conform to any and all reasonable clothing regulations of Target.
7. **Indemnification.** Except as provided herein, Contractor agrees to assume responsibility for all injuries or damages to persons or property which relate to or arise out of Contractor's performance of Services, Contractor's failure to perform its obligations under this Agreement, or the negligence or wrongful acts of Contractor or its agents or employees. Contractor, to include his agents, servants, employees, assigns, independent contractors, or anyone else retained by contractor for the performance of contractor's obligations under this contract, shall defend, indemnify and hold harmless Target, its agents and employees, from and against (1) any and all claims, suits, losses, damages, judgments or expenses (including attorney's fees incurred in responding to claims or suits) which relate to, arise out of, or are asserted or incurred as a result of, Contractor's performance of Services, Contractor's failure to perform its obligations under this Agreement, or the negligence or wrongful acts of Contractor or its agents or employees; or (2) any claims made by Contractor's employees arising out of the performance of Services provided, however, that the foregoing indemnity obligation shall not apply to any injury, damage or loss caused by the sole negligence of Target. The obligations under this paragraph shall survive the termination of this Agreement.

Contractor shall, at its expense, be responsible for the defense of any claims or suits for which it is obligated to indemnify Target and shall, in connection with such defense, provide Target with counsel reasonably satisfactory to Target. Target shall have the right,

at its option and at its own expense, to defend (with or without Contractor) any such actions, claims, demands and suits. Target shall cooperate with Contractor, as Contractor reasonably requires, in such defense. Upon request, Contractor shall advise Target of the current status of any action, claim, demand or suit being defended by Contractor in accordance herewith.

If any claims are made against Target as a result of the work or as a result of any actions or failures to act by the Contractor, or if Target reasonably believes that such claims will be made, Target may withhold from the amount otherwise due or to become due under this agreement such amount as Target reasonably determines may be necessary to cover such claims and to cover any costs which Target reasonably anticipates maybe incurred in connection with defending against such claims. The foregoing right to withhold payment shall not be Target's exclusive remedy and shall be in addition to any other remedies which Target may have under this agreement or at law or in equity.

8. **Limitation of Liability.** The work to be performed under this Agreement shall be performed at Contractor's risk. Target shall not be liable for any loss, theft or damage of or to the vehicles, equipment, supplies or other property of Contractor or its employees, or in the possession or custody of Contractor or its employees, nor shall Target be liable for any damage to Contractor's business or other consequences arising out of such loss, theft or damage.
9. **Insurance.** Contractor shall maintain, at Contractor's expense, the following insurance:
 - 1) workers' compensation insurance for all of its employees and employer's liability insurance in the amount of \$1,000,000;
 - 2) commercial general liability insurance with minimum limits of liability of \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate per location. Such insurance shall provide coverage for Contractor's indemnification obligation set forth in this Agreement, and shall include Target Corporation and Target Stores as additional insureds;
 - 3) automobile liability insurance (bodily injury and property damage liability), including coverage for owned, hired and non-owned automobiles, with minimum limits of liability of \$1,000,000 combined single limit per occurrence. Such insurance shall include Target Corporation and Target Stores as additional insureds.

All insurance required by this Agreement shall be provided by an insurance company or companies acceptable to Target and licensed to do business in the state in which the Services are provided, and shall provide that coverage shall not be terminated or changed without at least thirty (30) days prior written notice to Target. Prior to performing any Services, Contractor shall provide Target with certificates of insurance evidencing the insurance required by this Agreement. The certificates shall contain sufficient information to show that Contractor carries workers' compensation insurance in all states in which Services are being provided. The purchase of such insurance and furnishing of such certificates shall not limit Contractor's obligations under this Agreement or in any way modify Contractor's agreement to indemnify Target.

10. Security. Contractor and its employees shall be subject to all security checks and regulations that Target deems necessary and shall comply with any written security regulations provided by Target. Contractor shall advise each of its employees performing Services that Target will not tolerate theft or misuse of its moneys, merchandise, property or equipment, violation of its security regulations, or abuse of its customers or employees. Target shall have the right to reject any employee of Contractor assigned to duty at Target, and to require the immediate removal of such employee from Target's premises. Contractor shall cooperate in any investigation of theft, loss, or violation of Target's policies involving any of Contractor's employees. Contractor shall be responsible for all losses to Target occasioned by the activities of its employees (including, but not limited to, thefts) and shall reimburse Target for all such losses. Such losses shall be reimbursed to Target within ten days after Contractor is presented with evidence of the loss. Losses of merchandise shall be calculated on the basis of the retail value of the merchandise. A signed statement from an employee of Contractor admitting to the theft or loss shall be conclusive evidence of the loss. If Contractor fails to reimburse Target within ten days, Contractor shall be liable for any expenses incurred by Target to recover such losses. Target may withhold the amount of such losses from any payments owed by Target to Contractor. Target will provide reasonable assistance to aid Contractor in filing a claim with its bonding company or insurance carrier, but Contractor shall reimburse Target for the loss whether or not Contractor is able to recover from its bonding company or insurance carrier. If the Services will be performed inside any Target store during hours that the store is not open for business to the general public, Contractor and its employees shall comply with the Target Security Regulations in attached Exhibit B and Contractor shall maintain employee dishonesty bonds on its employees providing such services to Target as required in Exhibit B.
11. Taxes. Contractor shall be responsible for the payment of any and all taxes, of whatever type, including, but not limited to, sales and use taxes, which either Contractor or Target is required to pay as a result of Contractor's provision of the Services or this Agreement. Contract amount shall include all taxes. The amount of such tax shall be separately identified by Contractor on all of Contractor's invoices.
12. Non-Exclusive. Target does not agree to use Contractor exclusively or to provide any minimum amount of work. Contractor is free to contract to perform similar services to others during the term of this Agreement.
13. Governing Law. This Agreement and performance hereunder shall be governed in all respects by the laws of the State of Minnesota. Contractor and Target hereby agree that any legal action or proceeding involving this Agreement may be brought in the courts of the State of Minnesota or the United States of America, District of Minnesota, and by execution and delivery of this Agreement, Contractor and Target hereby accept for themselves and in respect of their property the jurisdiction of the aforesaid courts.
14. Default. In the event Contractor breaches any of its obligations hereunder, Target may undertake any one or more of the following remedies (provided, however, that Target shall not be allowed to receive double recoveries for any damages):

- (a) terminate this Agreement effective (i) upon three (3) days prior written notice or (ii) immediately upon written notice if the breach is such that Target believes, in its sole opinion, that it must take immediate steps to cure such a breach;
- (b) cure or begin to cure such breach and (i) invoice Contractor or (ii) set off from any amounts due to Contractor hereunder for Target's reasonable costs in connection therewith including, without limitation, the cost of enforcing Contractor's obligations hereunder;
- (c) if the breach involves an obligation the breach of which may subject Target to a governmental fine or penalty, fine Contractor an amount not to exceed the greater of \$1,000.00 or the amount of any penalty or fine imposed by any governmental body in connection therewith;
- (d) set off any damages incurred by Target arising from such breach against and from any amounts due to Contractor hereunder;
- (e) sue Contractor for damages and/or specific performance hereunder, or for any other remedy available at law or in equity.

All remedies given herein are cumulative and the exercise of one remedy shall not preclude the exercise of any other remedy provided herein or by law. No waiver by either party of any failure on the part of the other party to observe strictly the terms of this Agreement shall preclude the strict enforcement of this Agreement with respect to any subsequent default by such other party.

- 15. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes and cancels all prior agreements between the parties for Services at the location(s) covered by this Agreement. No statements or representations not included herein shall be binding upon the parties and no modification or amendment of any of the terms hereof shall be valid or binding unless made in writing and signed by duly authorized officers of Contractor and Target.
- 16. Assignment. Contractor shall not subcontract for Services Contractor is to provide under this Agreement. This Agreement shall not be assigned by either party without the written consent of the other party. Except as so restricted, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.
- 17. Notices. All notices, requests, consents, demands, approvals and other communications hereunder shall be sent postage prepaid by registered or certified mail, return receipt requested, addressed as set forth on the Data Sheet. Either party, upon written notice to the other, may designate a new notice address. Notices shall be effective upon receipt or upon the date that delivery is attempted and refused.
- 18. Severability. If any provision of this Agreement shall be deemed invalid or unenforceable, this Agreement shall be construed as though such provision does not appear herein and shall be otherwise fully enforceable.
- 19. Headings. The headings to the various sections of this Agreement have been included for convenience of reference and shall not affect the meaning of the language included therein.

EXHIBIT A FLOOR MAINTENANCE SPECIFICATIONS

A. TARGET EXPECTATIONS:

Target Stores are upscale, discount department stores that are known for having the cleanest stores in the industry. One of our most important goals is to provide a clean, shiny environment for both our guests and our Team Members. This not only makes shopping and working in a Target Store a pleasant experience, but also provides a stage for our merchandise to be displayed. The following Exhibit provides the Contractor with a detailed list of specifications and expectations. These are some of the major concerns that we will be looking at on a daily, consistent basis:

- 1) All of the VCT or terrazzo on the sales floor and, if applicable, office floor tile will have a clean, clear "wet look" shine.
- 2) All carpeting, as applicable, will be spot cleaned as spots appear, and will only be vacuumed with a commercial vacuum. This will include all walk-off mats, such as the front door First Impression mats. If it is part of your contract, we expect all store carpet (both on and off the sales floor) to be thoroughly extracted as necessary to meet the expectations set forth herein. Remove chemical aisle mats for periodic cleaning of mats and floor.
- 3) All the restrooms will be thoroughly cleaned and disinfected; to include all fixtures, walls, floors, and partitions. The Contractor will insure that OSHA safety provisions are followed in the removal or handling of bloodborne pathogens.
- 4) The Food Avenue floor, and other quarry tile floors such as the front entrance area, will be swept and scrubbed, with no floor finish applied.
- 5) All areas will be cleaned with an eye for detail. For example, no floor finish buildup along fixtures or carpet edges, no dirt in corners or along walls and doors, no spots or stains on the carpet, no pins or trash in the fitting rooms, no trash under the register terminals, etc.
- 6) The Contractor will provide commercial-grade equipment for the specific store, and not share between stores in a market. This equipment will be maintained in good working order to allow for NIGHTLY use. Any replacement equipment will be provided to the specific store by the next scheduled shift after a malfunction occurs.
- 7) All Contractor's employees who will be operating PROPANE burnishing equipment be certified in propane equipment operation and selection of proper buffing pads.
- 8) The Contractor will maintain their designated maintenance area in a clean, neat and safe manner.
- 9) We have high standards at Target, but we also want a mutually beneficial relationship with our Contractors. On the following pages, we have listed the detailed specifications for cleaning a Target Store.

B. CONTRACTOR'S DUTIES:

- 1) Contractors will begin performing the services in the stores on the dates set forth on the Data Sheet as the "Beginning Date for Service". The services outlined in this Exhibit A shall be performed when the Target Store is closed and on the days of the week set forth in the Data Sheet, unless otherwise directed by Target. The Contractor shall provide as many labor hours as needed to maintain the agreed upon standards.
- 2) Contractor's employees will at all times be under the direct control of a supervisor whose responsibility it is to insure that the maintenance employees perform their duties according to the standards set forth in this Exhibit A.
- 3) The Contractor will provide an English-speaking/reading supervisor at the store during all shifts and during scheduled walk-throughs. The Contractor's supervisor will be an employee of the Contractor.
- 4) Contractor shall remove all propane tanks at the end of their shift and either store them off-site or in a locked, OSHA approved propane cage that the Contractor will provide. Contractor shall provide propane certification for their employees before arrival on site.
- 5) The Contractor shall perform a weekly inspection of the Store with the Target Store Team Leader or Designated Store Representative. The inspection will be done by a member of the Contractor's Management Team. Inspections will be done using the Target Quality Checklist, which will be kept on file by Target.

C. PAYMENT PROCEDURES:

- 1) Floor and carpet maintenance and cleaning services are to be charged at the rate set forth in the Data Sheet.
- 2) Contractor's billing shall comply with the following requirements.
 - a) All billing shall be made monthly. Each monthly billing must include a single invoice, broken down by store number where work was completed. Each invoice shall indicate separately the cost for cleaning the floor and/or carpet, Optional Services, and any taxes, as applicable.
 - b) All billing should be submitted during the first week of the month, following the month in which the service was performed.
 - c) Target will not accept any billing beyond five months from the date the work was performed.
 - d) In the event the monthly billing includes Optional Services, Contractor must include a completed original Optional Services Rider signed by Target. A copy of the Optional Service Rider is attached to this Exhibit. Target shall have no obligation to pay for

Optional Services in the event Contractor does not provide an Optional Services Rider as required this Agreement.

- e) In the event the Store being serviced by the Contractor is remodeled, changing the square footage of the Sales Area, the Contractor's rate will be Adjusted Proportionately, using the current per square foot price.
- 3) Provided the Contractor is not in default under this Agreement, Target shall pay Contractor's bill within 30 days after receipt of the bill by Target.
- 4) If any claims are made against Target as a result of the work or as a result of any actions or failures to act by the Contractor, or if Target reasonably believes that such claims will be made, Target may withhold from the amount otherwise due or to become due under this Agreement such amount as Target reasonably determines may be necessary to cover such claims and to cover any costs which Target reasonably anticipates may be incurred in connection with defending against such claims. The foregoing right to withhold payment shall not be Target's exclusive remedy and shall be in addition to any other remedies which Target may have under this Agreement or at law or in equity.

D. TILE FLOOR MAINTENANCE PROGRAM:

Contractor shall only use the floor finish system designated on the Data Sheet. There is to be no variation or change from the selected floor finish system without approval of Target. Failure to follow this requirement will be viewed as a breach of the Contractor's obligation as provided in Section 2 of the Terms and Conditions, and may result in the termination of the Agreement for cause. All chemicals will be delivered to the Contractor in full cartons only, or in manufacturers containers.

1. BASIC SERVICES

The following guidelines are meant to give the Contractor a basic idea of the requirements of a Target Store ("the Basic Services"). The Contractor must follow the manufacturer's suggested procedures for all cleaning materials.

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Cleaning Specifications
Daily Requirements

Resilient Flooring

- Sweep/dustmop all flooring
- Remove gum, tar, etc.
- Machine scrub flooring
- Trail mop behind auto scrubber
- High speed burnish floor
- Dust mop area burnished

Carpet (including fitting rooms)

- Vacuum all carpeted areas
- Remove all gum, pins, etc.
- Remove all spots and stains

Entrance Areas

- Vacuum and extract entrance mats
- Sweep and machine scrub vestibule or front entrance area
- Clean glass as necessary

Restrooms

- Empty wastebaskets
- Clean and refill all dispensers
- Clean mirrors
- Clean chrome fittings
- Clean and sanitize sinks, toilets, urinals
- Check and refill deodorizers
- Sweep, machine scrub, sanitize, rinse floors
- Spot wash walls, partitions, doors, thoroughly scrub where necessary

Trash Pickup

- Empty all waste baskets, receptacles(both inside and outside), cigarette urns, etc.
- Scrub and sanitize as necessary
- Replace liners

Office Area and Lounge

- Perform all standard procedures for tile, carpet and trash pickup

Food Services

- Thoroughly sweep all floors, including under all equipment, tables, food prep room, etc.
- Machine scrub, rinse and damp mop ceramic or quarry tile
- Empty all trash receptacles, scrub and disinfect inside and out, replace liners

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Frequency as Necessary to Meet Contract Expectations

Resilient Flooring

- Deep scrub and apply finish
- Strip and apply finish

Carpet

- Extract

Stockroom Floors

- Autoscrub
- Seal with approved sealer(not in stores that have permanent seal)
- Wax is NOT to be used on stockroom floors

Entrance Areas

- Clean all glass and doors (interior and exterior surfaces)

Restrooms

- Thoroughly scrub walls, partitions and doors
- Clean diffusers and vents

The cost for providing the Basic Services (other than carpet extraction) is set forth on the Data Sheet as the "Base Fee - Basic Services".

The cost for carpet extraction is set forth on the Data Sheet as the "Base Fee - Carpet Extraction.

Target may, at its option, elect to extract the carpet with Target's in-house cleaning team. The parties shall note such an election by not filling in the price for "Base Fee-Carpet Extraction" on the Data Sheet.

2. OPTIONAL SERVICES

Target will not pay for Optional Services unless Target and Contractor have executed an Optional Services Rider in the form attached hereto.

E. EQUIPMENT AND SUPPLIES

1. Equipment

- a) Contractor will provide the following Target approved equipment for each store: (These are minimums and may vary by store volume, etc.) All equipment will be kept in a clean, functional condition. Defective equipment must be replaced or repaired by the next shift.
 - One automatic floor scrubber: UL approved and at least 24" wide.
 - One swing machine: UL approved and at least 18" wide.
 - One propane UHS burnisher: 24" or greater and 2,000 RPM minimum. The engine shall be clean-burning, and the engine and propane tank shall comply with OSHA specifications. Optional: Burnisher may be Battery-Operated provided it is a type and manufacturer acceptable to Target.

- One commercial-grade vacuum: at least 6.5 amps, 12" minimum, with at least a 50 foot UL approved cord. Optional would be a Back-Pack vacuum, commercial quality, Or Battery-Operated wide vacuum.
- One commercial grade carpet extractor (or CFR system) with all associated peripheral accessories.

2. Supplies

a) Contractor will provide the following supplies for each specific store sufficient to perform all of the services contemplated by this Agreement. All supplies will be kept in a clean, functional condition. Further, all chemicals kept in bottles shall have OSHA-approved labels and Contractor shall maintain OSHA required Material Safety Data Sheets in a visible location in Contractor's maintenance room.

- All pads, dust mops, wet mops, buckets, ringers, etc.
- All restroom sanitation and deodorizing supplies.
- All floor finish and carpet cleaning supplies.
- All floor finish will be delivered in sealed, factory containers, clearly marked with manufacturer's labels.
- All required wall charts, instructions, OSHA charts, Material Safety Data Sheets, and schedules in English and any other language necessary.
- Contractor to provide all necessary Bloodborne Pathogen clean-up kits.

3. Target will furnish:

- Trash can liners and all disposable restroom products such as soap and paper products.
- Lockable storage area for Contractor's supplies and equipment (except storage area for propane tanks).

4. Target may, at its option and at its sole cost and expense, supply floor/carpet and general cleaning products to Contractor for use in the store. The parties shall designate on the Data Sheet if Target is to supply such products. Contractor shall advise Target in the event inventory of the products in the store is low or in need of replenishment. Target shall use reasonable efforts to keep adequate amounts of products in the store for Contractor's use; provided, however, the maximum amount that Target shall be required to spend per year on products is designated as the "Maximum Chemical Budget" on the Data Sheet. All floor/carpet and general cleaning products used by Contractor in excess of the Maximum Chemical Budget shall be paid for by Contractor.

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EXHIBIT D

CERTIFICATION STATEMENT

I (contractor) Jim's Maintenance hereby certify that all my employees who will be working on the premises of Target Stores, have provided me with proper documentation indicating they are legally authorized to work in the United States.

I certify the above on this 13 day of January, 2001.

By: Ryan Funderburk

Its: President

Notary

Lance Briggs
EXP: 12/24/2001
Lance Briggs

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Plaintiffs' Appendix of Summary Judgment Evidence

Exhibit 3

FLOOR MAINTENANCE DATA SHEET

1. Parties to this Agreement:

"Target" Target Stores, Division of Target Corporation,
a Minnesota corporation

Stores: T-0019, T-0043, T-0044,
T-0045, T-0046, T-0063, T-0218,
T-0270, T-1204, T-1785

"Contractor" Jim's Maintenance and Sons, Inc.
a Corporation

2. Store Locations: See Schedule 1 attached to this Data Sheet

3. Rates: See Schedule 1 attached to this Data Sheet

4. Term of this Agreement:

Commences on July 09, 2000

Expires on July 08, 2003

5. Payment address: Jim's Maintenance and Sons, Inc.
P. O. Box 1251
Choctaw, OK 73020

6. Notice Address: Contractor

Jim's Maintenance and Sons, Inc.
18611 N.E. 23rd Street
Harrah, OK 73045

Phone: 800-826-7492 Fax: 800-606-7492

Billing Address: Target

Target Stores
555 Republic Drive, Suite 500
Plano, TX 75074

Att: Building Services

7. Address for Insurance Certificate

Target Stores
3701 Wayzata Boulevard
Minneapolis, MN 55416
Attn: Building Services Administration TFS-7C-N

8. Discount for Early Payment:

Target may elect to take a discount of 0 % for payment made within 0 days of receipt of Contractor's invoice.

9. Contract Documents: The terms of this Agreement consists of this Data Sheet (including Schedule 1 attached hereto), the attached Terms and Conditions, and the following Exhibits:

- Exhibit A - Floor Maintenance Specifications
- Attachment to Exhibit A - Optional Services Rider
- Exhibit B - Security Guidelines
- Exhibit C - Not Applicable
- Exhibit D - Certification Statement
- Exhibit E - Not Applicable

Date Agreement Was Printed: January 16, 2001

TARGET STORES, DIVISION OF
TARGET CORPORATION

By:

Name:

Title:

Date:

Debra M. Darson
Debra M. Darson
Mgr. Bldg Svcs
1-31-2001

By:

Name:

Title:

Date:

CONTRACTOR:

JIM'S MAINTENANCE AND SONS, INC.

Bryan Funderburgh
Bryan Funderburgh
President
1-29-2001

EXHIBIT

PLF 3
10/2/07 Gisch

Schedule 1 to Floor Maintenance Data Sheet

16-Jan-01

Store	Name	Frequency of Service	Base Fee - Basic Services	Base Fee - Carpet Extraction	Floor System (i.e. S.C. Johnson, Butchers, etc.)	Party Supplying Floor/Carpet Cleaning Chemicals	Maximum Chemical Budget	Beginning Date for Service	Optional Services
T-19	Tulsa 1701 South Yale Tulsa, OK 74112-	7 days/ week	\$10,144.33 Month		S.C. Johnson's Signature	Target	\$7,292.00 /yr.	02/04/2001	
T-43	Oklahoma City N 5400 North May Ave. Oklahoma City, OK 73112-	7 days/ week	\$8,298.33 Month		S.C. Johnson's Signature	Target	\$8,550.00 /yr.	02/04/2001	
T-44	Oklahoma City S 800 S.W. 44th Street Oklahoma City, OK 73109-	7 days/ week	\$8,831.33 Month		S.C. Johnson's Signature	Target	\$8,050.00 /yr.	02/04/2001	
T-45	Midwest City 7601 East Reno Midwest City, OK 73110-	7 days/ week	\$7,652.66 Month		S.C. Johnson's Signature	Target	\$8,050.00 /yr.	02/04/2001	
T-46	Norman 2417 West Main St. Norman, OK 73069-	7 days/ week	\$8,073.00 Month		S.C. Johnson's Signature	Target	\$7,350.00 /yr.	02/04/2001	
T-63	Woodland Hills 7178 So. Memorial Dr. Tulsa, OK 74133-	7 days/ week	\$8,970.00 Month		S.C. Johnson's Signature	Target	\$7,350.00 /yr.	02/04/2001	

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JIMS MAINTENANCE AND SONS, INC.

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16-Jan-01

Store	Name	Frequency of Service	Base Fee - Basic Services	Base Fee - Carpet Extraction	Floor System (i.e. S.C. Johnson, Butcher, etc.)	Party Supplying Floor/Carpet Cleaning Chemicals	Maximum Chemical Budget	Beginning Date for Service	Optional Services
T-218	Quail Springs 2201 W Memorial Road Oklahoma City, OK 73134	7 days/ week	\$8,952.66 Month		S.C. Johnson's Signature	Target	\$7,350.00 /yr.	02/04/2001	
T-270	Eastland 14009 East 21st St. Tulsa, OK 74134	7 days/ week	\$7,002.66 Month		S.C. Johnson's Signature	Target	\$7,350.00 /yr.	02/04/2001	
T-1204	SAN ANTONIO 8234 Agora Parkway Selma, TX 78154	7 days/ week	\$9,338.53 Month		S.C. Johnson's Signature	Target	\$7,500.00 /yr.	07/09/2000	
T-1785	San Antonio W 11311 Bandera Rd San Antonio, TX 78250	7 days/ week	\$19,321.25 Month		S.C. Johnson's Signature	Target	\$12,000.00 /yr.	02/01/2001	

PRICE INCLUDES ALL TAXES

HM139824106

JIMS MAINTENANCE AND SONS, INC.

Target Stores

By

Contractor

Its

By

President

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TERMS AND CONDITIONS

1. **Services.** During the term of this Agreement, Contractor agrees to perform the Services described in attached Exhibit A (hereinafter the "Services"), for the Target store locations listed in the Data Sheet as and when requested by Target, and to provide all tools, labor, supervision and products necessary to perform the Services.
2. **Termination.** Unless sooner terminated in accordance with the terms of this Agreement, this Agreement shall have an initial term as set forth in the Data Sheet and shall thereafter be extended on a month to month basis until terminated at any time by either party by giving written notice to the other party not less than thirty (30) calendar days prior to the effective date of the termination. The foregoing notwithstanding, this Agreement may be terminated by Target without cause at any time during the initial term by giving thirty (30) days prior written notice to Contractor. If this Agreement relates to more than one Target store location, the party terminating this Agreement pursuant to this paragraph may specify in its notice the particular stores to which the notice of termination relates, and this Agreement shall terminate as to those stores and continue as to the remaining stores.

This Agreement may be also terminated by Target for cause at any time in the event Contractor, in Target's sole reasonable opinion, fails to perform or otherwise breaches this Agreement. Such failure or breach may include, but not be limited to, any failure on the part of Contractor to provide any of the Services when scheduled, any failure on the part of Contractor to provide a sufficient number of adequately trained personnel to perform Services when scheduled, or any failure on the part of employees or agents of Contractor to observe applicable Target regulations. Such termination for cause shall be effective upon the earlier of the date of receipt by Contractor of the notice of termination or a date which is three (3) business days from and after the date of mailing of said notice of termination. If this Agreement relates to more than one Target store location, Target may, at Target's option, terminate this Agreement for cause as provided in this paragraph either in its entirety as to all locations, or only as to those locations for which a default or breach has occurred as designated in the notice of termination. Target shall specify in its notice the stores to which the notice of termination relates, and this Agreement shall terminate as to those stores and continue as to the remaining stores.

Target's sole obligation to Contractor upon termination of this Agreement shall be to pay Contractor for such Services as Contractor can document, to the satisfaction of Target, were actually provided prior to the date of termination in accordance with this agreement, less any amounts due and payable by contractor to Target hereunder.

3. **Payment.** Target will pay Contractor for the Services at the rate(s) specified in the Data Sheet. Target pays from invoice only and no amount shall be payable by Target hereunder until Contractor has complied with the payment procedures set forth in attached Exhibit A, or with such other reasonable procedures as Target may designate in writing. Invoices shall be submitted to the billing address set forth in the Data Sheet and shall be accompanied by such backup documentation as Target may reasonably require. Target will pay proper invoices within thirty (30) days after receipt. If applicable, Target may deduct from the amount of an invoice the amount of the discount for early payment specified in the Data Sheet or any amount due and payable by contractor to Target hereunder. In no event shall

Contractor deliver invoices or will Target be obligated to pay invoices for Services not actually provided prior to the invoice date. Target shall have the right upon thirty (30) days prior notice, to audit Contractor's books and records as they relate to the Services provided by Contractor pursuant to this Agreement.

In addition, Target shall have the right to fine Contractor an amount up to \$1,000 for any breach by Contractor of its obligations hereunder, which breach may subject Target to a fine or penalty under any applicable governmental authority, rule or regulation. In the event a building alarm is negligently or accidentally triggered by Contractor or its employee or agent, Contractor shall pay all of Target's out-of-pocket costs and administrative expenses in connection therewith, including a minimum administrative charge of \$100. Contractor understands the foregoing amounts payable to Target have been agreed to in view of the difficulty in determining Target's actual costs and damages because of difficulties in apportioning the costs of personnel responding to such alarms and the fact that Target's alarm vendors and public authorities have different policies, procedures and thresholds in connection with false alarms and with violations of rules and regulations.

4. **Independent Contractor.** By this Agreement, Target and Contractor intend to create an independent contractor relationship. As such, Target is interested only in the results of Contractor's performance and not the specific method or manner of performance. Therefore, while Contractor agrees to perform the Services in accordance with and to Target's standards and specifications, Contractor retains sole and exclusive control over the method and manner in which the Services are performed. All Services performed pursuant to this Agreement are subject to Target's right of inspection and must meet with Target's approval. All personnel of Contractor used to perform Services under this Agreement shall be employees of Contractor and not of Target. Contractor shall comply with all applicable federal, state and local laws regarding compensation, eligibility and conditions of employment. Contractor shall, at the commencement of the term and from time to time as may be required by Target, to provide a notarized Certification Statement to Target in writing that all employees of Contractor and any subcontractor working on Target premises are properly documented to legally work in the United States. The form of certification is attached to this Agreement as Exhibit D. Contractor shall have a similar process to ensure that all agents, servants, independent contractors or anyone else related to the contractor for the contractor's obligations under this contract have been documented to legally work in the United States.

Contractor shall pay all federal, state and local payroll, social security, unemployment and other taxes, contributions and premiums required to be withheld or paid with respect to its employees, and shall file all returns incident to such taxes, contributions and premiums. Target shall have no obligation to provide Contractor or any of Contractor's employees with any employee benefits provided for employees of Target. Contractor may not claim benefits from Target under applicable workers' compensation laws for injuries sustained by Contractor or its employees while providing the Services.

Contractor shall have no right to purchase goods or services in the name of Target, execute or make contracts in the name of Target, or obligate Target in any way. Contractor is not an agent or employee of Target and cannot represent itself as such. Expenses incurred by

Contractor in the performance of this Agreement shall be reimbursed only if approved by Target in writing prior to being incurred by Contractor.

In the event any court or administrative tribunal or agency with appropriate jurisdiction determines that an employment relationship has been or will be established by the performance of this Agreement, this Agreement shall immediately cease and Contractor shall reimburse and indemnify Target for expenses of any nature, including, but not limited to, tax withholding and insurance claims in the nature of unemployment compensation and/or workers' compensation, imposed by any level of government.

5. **Compliance with Law.** Contractor shall comply with all federal, state and local government laws, regulations and requirements applicable to the Contractor's performance under this Agreement, including applicable federal or state OSHA regulations and guidelines, and applicable regulations governing the use, clean-up and disposal of materials used in providing Services (including requirements relating to the provision of material safety data sheets). Contractor shall procure and maintain at its sole expense all necessary permits and licenses for the conduct of its business. In the event of an allegation that Contractor has failed to comply with any law, regulation or requirement, or failed to obtain any permit or license, Contractor shall pay any fines or penalties imposed upon Target and shall reimburse Target for any expenses (including attorneys' fees) incurred by Target in responding to such allegation.
6. **Warranties and Guarantees.** Contractor warrants and guarantees that the Services (a) shall be provided in a professional and workmanlike manner, (b) shall be performed by adequately-trained and competent personnel, all of whom are familiar with Target's operations, and (c) shall meet all industry standards applicable to the Services. Contractor further warrants and guarantees that its employees will conform to any and all reasonable clothing regulations of Target.
7. **Indemnification.** Except as provided herein, Contractor agrees to assume responsibility for all injuries or damages to persons or property which relate to or arise out of Contractor's performance of Services, Contractor's failure to perform its obligations under this Agreement, or the negligence or wrongful acts of Contractor or its agents or employees. Contractor, to include his agents, servants, employees, assigns, independent contractors, or anyone else retained by contractor for the performance of contractor's obligations under this contract, shall defend, indemnify and hold harmless Target, its agents and employees, from and against (1) any and all claims, suits, losses, damages, judgments or expenses (including attorney's fees incurred in responding to claims or suits) which relate to, arise out of, or are asserted or incurred as a result of, Contractor's performance of Services, Contractor's failure to perform its obligations under this Agreement, or the negligence or wrongful acts of Contractor or its agents or employees; or (2) any claims made by Contractor's employees arising out of the performance of Services provided, however, that the foregoing indemnity obligation shall not apply to any injury, damage or loss caused by the sole negligence of Target. The obligations under this paragraph shall survive the termination of this Agreement.

Contractor shall, at its expense, be responsible for the defense of any claims or suits for which it is obligated to indemnify Target and shall, in connection with such defense, provide Target with counsel reasonably satisfactory to Target. Target shall have the right,

at its option and at its own expense, to defend (with or without Contractor) any such actions, claims, demands and suits. Target shall cooperate with Contractor, as Contractor reasonably requires, in such defense. Upon request, Contractor shall advise Target of the current status of any action, claim, demand or suit being defended by Contractor in accordance herewith.

If any claims are made against Target as a result of the work or as a result of any actions or failures to act by the Contractor, or if Target reasonably believes that such claims will be made, Target may withhold from the amount otherwise due or to become due under this agreement such amount as Target reasonably determines may be necessary to cover such claims and to cover any costs which Target reasonably anticipates maybe incurred in connection with defending against such claims. The foregoing right to withhold payment shall not be Target's exclusive remedy and shall be in addition to any other remedies which Target may have under this agreement or at law or in equity.

8. Limitation of Liability. The work to be performed under this Agreement shall be performed at Contractor's risk. Target shall not be liable for any loss, theft or damage of or to the vehicles, equipment, supplies or other property of Contractor or its employees, or in the possession or custody of Contractor or its employees, nor shall Target be liable for any damage to Contractor's business or other consequences arising out of such loss, theft or damage.
9. Insurance. Contractor shall maintain, at Contractor's expense, the following insurance:
 - 1) workers' compensation insurance for all of its employees and employer's liability insurance in the amount of \$1,000,000;
 - 2) commercial general liability insurance with minimum limits of liability of \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate per location. Such insurance shall provide coverage for Contractor's indemnification obligation set forth in this Agreement, and shall include Target Corporation and Target Stores as additional insureds;
 - 3) automobile liability insurance (bodily injury and property damage liability), including coverage for owned, hired and non-owned automobiles, with minimum limits of liability of \$1,000,000 combined single limit per occurrence. Such insurance shall include Target Corporation and Target Stores as additional insureds.

All insurance required by this Agreement shall be provided by an insurance company or companies acceptable to Target and licensed to do business in the state in which the Services are provided, and shall provide that coverage shall not be terminated or changed without at least thirty (30) days prior written notice to Target. Prior to performing any Services, Contractor shall provide Target with certificates of insurance evidencing the insurance required by this Agreement. The certificates shall contain sufficient information to show that Contractor carries workers' compensation insurance in all states in which Services are being provided. The purchase of such insurance and furnishing of such certificates shall not limit Contractor's obligations under this Agreement or in any way modify Contractor's agreement to indemnify Target.

10. **Security.** Contractor and its employees shall be subject to all security checks and regulations that Target deems necessary and shall comply with any written security regulations provided by Target. Contractor shall advise each of its employees performing Services that Target will not tolerate theft or misuse of its moneys, merchandise, property or equipment, violation of its security regulations, or abuse of its customers or employees. Target shall have the right to reject any employee of Contractor assigned to duty at Target, and to require the immediate removal of such employee from Target's premises. Contractor shall cooperate in any investigation of theft, loss, or violation of Target's policies involving any of Contractor's employees. Contractor shall be responsible for all losses to Target occasioned by the activities of its employees (including, but not limited to, thefts) and shall reimburse Target for all such losses. Such losses shall be reimbursed to Target within ten days after Contractor is presented with evidence of the loss. Losses of merchandise shall be calculated on the basis of the retail value of the merchandise. A signed statement from an employee of Contractor admitting to the theft or loss shall be conclusive evidence of the loss. If Contractor fails to reimburse Target within ten days, Contractor shall be liable for any expenses incurred by Target to recover such losses. Target may withhold the amount of such losses from any payments owed by Target to Contractor. Target will provide reasonable assistance to aid Contractor in filing a claim with its bonding company or insurance carrier, but Contractor shall reimburse Target for the loss whether or not Contractor is able to recover from its bonding company or insurance carrier. If the Services will be performed inside any Target store during hours that the store is not open for business to the general public, Contractor and its employees shall comply with the Target Security Regulations in attached Exhibit B and Contractor shall maintain employee dishonesty bonds on its employees providing such services to Target as required in Exhibit B.
11. **Taxes.** Contractor shall be responsible for the payment of any and all taxes, of whatever type, including, but not limited to, sales and use taxes, which either Contractor or Target is required to pay as a result of Contractor's provision of the Services or this Agreement. Contract amount shall include all taxes. The amount of such tax shall be separately identified by Contractor on all of Contractor's invoices.
12. **Non-Exclusive.** Target does not agree to use Contractor exclusively or to provide any minimum amount of work. Contractor is free to contract to perform similar services to others during the term of this Agreement.
13. **Governing Law.** This Agreement and performance hereunder shall be governed in all respects by the laws of the State of Minnesota. Contractor and Target hereby agree that any legal action or proceeding involving this Agreement may be brought in the courts of the State of Minnesota or the United States of America, District of Minnesota, and by execution and delivery of this Agreement, Contractor and Target hereby accept for themselves and in respect of their property the jurisdiction of the aforesaid courts.
14. **Default.** In the event Contractor breaches any of its obligations hereunder, Target may undertake any one or more of the following remedies (provided, however, that Target shall not be allowed to receive double recoveries for any damages):

- (a) terminate this Agreement effective (i) upon three (3) days prior written notice or (ii) immediately upon written notice if the breach is such that Target believes, in its sole opinion, that it must take immediate steps to cure such a breach;
- (b) cure or begin to cure such breach and (i) invoice Contractor or (ii) set off from any amounts due to Contractor hereunder for Target's reasonable costs in connection therewith including, without limitation, the cost of enforcing Contractor's obligations hereunder;
- (c) if the breach involves an obligation the breach of which may subject Target to a governmental fine or penalty, fine Contractor an amount not to exceed the greater of \$1,000.00 or the amount of any penalty or fine imposed by any governmental body in connection therewith;
- (d) set off any damages incurred by Target arising from such breach against and from any amounts due to Contractor hereunder;
- (e) sue Contractor for damages and/or specific performance hereunder, or for any other remedy available at law or in equity.

All remedies given herein are cumulative and the exercise of one remedy shall not preclude the exercise of any other remedy provided herein or by law. No waiver by either party of any failure on the part of the other party to observe strictly the terms of this Agreement shall preclude the strict enforcement of this Agreement with respect to any subsequent default by such other party.

- 15. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes and cancels all prior agreements between the parties for Services at the location(s) covered by this Agreement. No statements or representations not included herein shall be binding upon the parties and no modification or amendment of any of the terms hereof shall be valid or binding unless made in writing and signed by duly authorized officers of Contractor and Target.
- 16. Assignment. Contractor shall not subcontract for Services Contractor is to provide under this Agreement. This Agreement shall not be assigned by either party without the written consent of the other party. Except as so restricted, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.
- 17. Notices. All notices, requests, consents, demands, approvals and other communications hereunder shall be sent postage prepaid by registered or certified mail, return receipt requested, addressed as set forth on the Data Sheet. Either party, upon written notice to the other, may designate a new notice address. Notices shall be effective upon receipt or upon the date that delivery is attempted and refused.
- 18. Severability. If any provision of this Agreement shall be deemed invalid or unenforceable, this Agreement shall be construed as though such provision does not appear herein and shall be otherwise fully enforceable.
- 19. Headings. The headings to the various sections of this Agreement have been included for convenience of reference and shall not affect the meaning of the language included therein.

EXHIBIT A FLOOR MAINTENANCE SPECIFICATIONS

A. TARGET EXPECTATIONS:

Target Stores are upscale, discount department stores that are known for having the cleanest stores in the industry. One of our most important goals is to provide a clean, shiny environment for both our guests and our Team Members. This not only makes shopping and working in a Target Store a pleasant experience, but also provides a stage for our merchandise to be displayed. The following Exhibit provides the Contractor with a detailed list of specifications and expectations. These are some of the major concerns that we will be looking at on a daily, consistent basis:

- 1) All of the VCT or terrazzo on the sales floor and, if applicable, office floor tile will have a clean, clear "wet look" shine.
- 2) All carpeting, as applicable, will be spot cleaned as spots appear, and will only be vacuumed with a commercial vacuum. This will include all walk-off mats, such as the front door First Impression mats. If it is part of your contract, we expect all store carpet (both on and off the sales floor) to be thoroughly extracted as necessary to meet the expectations set forth herein. Remove chemical aisle mats for periodic cleaning of mats and floor.
- 3) All the restrooms will be thoroughly cleaned and disinfected; to include all fixtures, walls, floors, and partitions. The Contractor will insure that OSHA safety provisions are followed in the removal or handling of bloodborne pathogens.
- 4) The Food Avenue floor, and other quarry tile floors such as the front entrance area, will be swept and scrubbed, with no floor finish applied.
- 5) All areas will be cleaned with an eye for detail. For example, no floor finish buildup along fixtures or carpet edges, no dirt in corners or along walls and doors, no spots or stains on the carpet, no pins or trash in the fitting rooms, no trash under the register terminals, etc.
- 6) The Contractor will provide commercial-grade equipment for the specific store, and not share between stores in a market. This equipment will be maintained in good working order to allow for NIGHTLY use. Any replacement equipment will be provided to the specific store by the next scheduled shift after a malfunction occurs.
- 7) All Contractor's employees who will be operating PROPANE burnishing equipment be certified in propane equipment operation and selection of proper buffing pads.
- 8) The Contractor will maintain their designated maintenance area in a clean, neat and safe manner.
- 9) We have high standards at Target, but we also want a mutually beneficial relationship with our Contractors. On the following pages, we have listed the detailed specifications for cleaning a Target Store.

B. CONTRACTOR'S DUTIES:

- 1) Contractors will begin performing the services in the stores on the dates set forth on the Data Sheet as the "Beginning Date for Service". The services outlined in this Exhibit A shall be performed when the Target Store is closed and on the days of the week set forth in the Data Sheet, unless otherwise directed by Target. The Contractor shall provide as many labor hours as needed to maintain the agreed upon standards.
- 2) Contractor's employees will at all times be under the direct control of a supervisor whose responsibility it is to insure that the maintenance employees perform their duties according to the standards set forth in this Exhibit A.
- 3) The Contractor will provide an English-speaking/reading supervisor at the store during all shifts and during scheduled walk-throughs. The Contractor's supervisor will be an employee of the Contractor.
- 4) Contractor shall remove all propane tanks at the end of their shift and either store them off-site or in a locked, OSHA approved propane cage that the Contractor will provide. Contractor shall provide propane certification for their employees before arrival on site.
- 5) The Contractor shall perform a weekly inspection of the Store with the Target Store Team Leader or Designated Store Representative. The inspection will be done by a member of the Contractor's Management Team. Inspections will be done using the Target Quality Checklist, which will be kept on file by Target.

C. PAYMENT PROCEDURES:

- 1) Floor and carpet maintenance and cleaning services are to be charged at the rate set forth in the Data Sheet.
- 2) Contractor's billing shall comply with the following requirements.
 - a) All billing shall be made monthly. Each monthly billing must include a single invoice, broken down by store number where work was completed. Each invoice shall indicate separately the cost for cleaning the floor and/or carpet, Optional Services, and any taxes, as applicable.
 - b) All billing should be submitted during the first week of the month, following the month in which the service was performed.
 - c) Target will not accept any billing beyond five months from the date the work was performed.
 - d) In the event the monthly billing includes Optional Services, Contractor must include a completed original Optional Services Rider signed by Target. A copy of the Optional Service Rider is attached to this Exhibit. Target shall have no obligation to pay for

Optional Services in the event Contractor does not provide an Optional Services Rider as required this Agreement.

- e) In the event the Store being serviced by the Contractor is remodeled, changing the square footage of the Sales Area, the Contractor's rate will be Adjusted Proportionately, using the current per square foot price.
- 3) Provided the Contractor is not in default under this Agreement, Target shall pay Contractor's bill within 30 days after receipt of the bill by Target.
- 4) If any claims are made against Target as a result of the work or as a result of any actions or failures to act by the Contractor, or if Target reasonably believes that such claims will be made, Target may withhold from the amount otherwise due or to become due under this Agreement such amount as Target reasonably determines may be necessary to cover such claims and to cover any costs which Target reasonably anticipates may be incurred in connection with defending against such claims. The foregoing right to withhold payment shall not be Target's exclusive remedy and shall be in addition to any other remedies which Target may have under this Agreement or at law or in equity.

D. TILE FLOOR MAINTENANCE PROGRAM:

Contractor shall only use the floor finish system designated on the Data Sheet. There is to be no variation or change from the selected floor finish system without approval of Target. Failure to follow this requirement will be viewed as a breach of the Contractor's obligation as provided in Section 2 of the Terms and Conditions, and may result in the termination of the Agreement for cause. All chemicals will be delivered to the Contractor in full cartons only, or in manufacturers containers.

1. BASIC SERVICES

The following guidelines are meant to give the Contractor a basic idea of the requirements of a Target Store ("the Basic Services"). The Contractor must follow the manufacturer's suggested procedures for all cleaning materials.

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Cleaning Specifications Daily Requirements

Resilient Flooring

- Sweep/dustmop all flooring
- Remove gum, tar, etc.
- Machine scrub flooring
- Trail mop behind auto scrubber
- High speed burnish floor
- Dust mop area burnished

Carpet (including fitting rooms)

- Vacuum all carpeted areas
- Remove all gum, pins, etc.
- Remove all spots and stains

Entrance Areas

- Vacuum and extract entrance mats
- Sweep and machine scrub vestibule or front entrance area
- Clean glass as necessary

Restrooms

- Empty wastebaskets
- Clean and refill all dispensers
- Clean mirrors
- Clean chrome fittings
- Clean and sanitize sinks, toilets, urinals
- Check and refill deodorizers
- Sweep, machine scrub, sanitize, rinse floors
- Spot wash walls, partitions, doors, thoroughly scrub where necessary

Trash Pickup

- Empty all waste baskets, receptacles(both inside and outside), cigarette urns, etc.
- Scrub and sanitize as necessary
- Replace liners

Office Area and Lounge

- Perform all standard procedures for tile, carpet and trash pickup

Food Services

- Thoroughly sweep all floors, including under all equipment, tables, food prep room, etc.
- Machine scrub, rinse and damp mop ceramic or quarry tile
- Empty all trash receptacles, scrub and disinfect inside and out, replace liners

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Frequency as Necessary to Meet Contract Expectations

Resilient Flooring

- Deep scrub and apply finish
- Strip and apply finish

Carpet

- Extract

Stockroom Floors

- Autoscrub
- Seal with approved sealer(not in stores that have permanent seal)
- Wax is NOT to be used on stockroom floors

Entrance Areas

- Clean all glass and doors (interior and exterior surfaces)

Restrooms

- Thoroughly scrub walls, partitions and doors
- Clean diffusers and vents

The cost for providing the Basic Services (other than carpet extraction) is set forth on the Data Sheet as the "Base Fee - Basic Services".

The cost for carpet extraction is set forth on the Data Sheet as the "Base Fee - Carpet Extraction.

Target may, at its option, elect to extract the carpet with Target's in-house cleaning team. The parties shall note such an election by not filling in the price for "Base Fee-Carpet Extraction" on the Data Sheet.

2. OPTIONAL SERVICES

Target will not pay for Optional Services unless Target and Contractor have executed an Optional Services Rider in the form attached hereto.

E. EQUIPMENT AND SUPPLIES

1. Equipment

- a) Contractor will provide the following Target approved equipment for each store: (These are minimums and may vary by store volume, etc.) All equipment will be kept in a clean, functional condition. Defective equipment must be replaced or repaired by the next shift.
 - One automatic floor scrubber: UL approved and at least 24" wide.
 - One swing machine: UL approved and at least 18" wide.
 - One propane UHS burnisher: 24" or greater and 2,000 RPM minimum. The engine shall be clean-burning, and the engine and propane tank shall comply with OSHA specifications. Optional: Burnisher may be Battery-Operated provided it is a type and manufacturer acceptable to Target.

- One commercial-grade vacuum: at least 6.5 amps, 12" minimum, with at least a 50 foot UL approved cord. Optional would be a Back-Pack vacuum, commercial quality, Or Battery-Operated wide vacuum.
- One commercial grade carpet extractor (or CFR system) with all associated peripheral accessories.

2. Supplies

a) Contractor will provide the following supplies for each specific store sufficient to perform all of the services contemplated by this Agreement. All supplies will be kept in a clean, functional condition. Further, all chemicals kept in bottles shall have OSHA-approved labels and Contractor shall maintain OSHA required Material Safety Data Sheets in a visible location in Contractor's maintenance room.

- All pads, dust mops, wet mops, buckets, ringers, etc.
- All restroom sanitation and deodorizing supplies.
- All floor finish and carpet cleaning supplies.
- All floor finish will be delivered in sealed, factory containers, clearly marked with manufacturer's labels.
- All required wall charts, instructions, OSHA charts, Material Safety Data Sheets, and schedules in English and any other language necessary.
- Contractor to provide all necessary Bloodborne Pathogen clean-up kits.

3. Target will furnish:

- Trash can liners and all disposable restroom products such as soap and paper products.
- Lockable storage area for Contractor's supplies and equipment (except storage area for propane tanks).

4. Target may, at its option and at its sole cost and expense, supply floor/carpet and general cleaning products to Contractor for use in the store. The parties shall designate on the Data Sheet if Target is to supply such products. Contractor shall advise Target in the event inventory of the products in the store is low or in need of replenishment. Target shall use reasonable efforts to keep adequate amounts of products in the store for Contractor's use; provided, however, the maximum amount that Target shall be required to spend per year on products is designated as the "Maximum Chemical Budget" on the Data Sheet. All floor/carpet and general cleaning products used by Contractor in excess of the Maximum Chemical Budget shall be paid for by Contractor.

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EXHIBIT B

SECURITY REGULATIONS

I. Security Regulations

No member of the overnight maintenance crew will be allowed admittance to Target unless he or she has signed a copy of Target's Overnight Crew Security Regulations.

Procedure

1. Target will supply Contractor with Target's Overnight Crew Security Regulations (Target Form 1313.24). Forms are available in English and Spanish.
2. Contractor will require each employee assigned to Target to read and sign the appropriate form.
3. The original will be given to the Manager on Duty at the Target Store on the first day of work. A copy will be kept on file by the Contractor, and will be available to Target for inspection upon request.

II. Identification and Photographs

Contractor will provide all members of their maintenance crew and staff with some type of identification which is acceptable to Target. This identification must be prominently displayed upon entry into the store and throughout the night.

III. Theft/Violation of Security Regulations

Target will not tolerate theft or misuse of its moneys, merchandise, property or equipment, violation of its security regulations, or abuse of its customers or employees. Target reserves the right to investigate, question, eject from the store, or refer to public authorities any employee of Contractor.

IV. Bonds

Contractor shall maintain employee dishonesty bonds on any of its employees who will be in any Target store during hours that the store is not open for business to the general public. Such bonds shall: a) be issued by companies licensed to do business in the state where the Services will be performed, b) be in amounts not less than \$25,000.00 each, c) include coverage for loss of money, merchandise or other property through any fraudulent or dishonest act committed by the employee, whether acting alone or in collusion with others, and d) state that Target shall be notified in writing at least thirty (30) days prior to cancellation, material change in, or nonrenewal of the bond.

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ADDENDUM TO EXHIBIT B

(This Addendum is for STORE USE ONLY. The signed original should be kept on file at the store).

OVERNIGHT CREW SECURITY REGULATIONS

The following Regulations were written to ensure employees/service personnel have the best possible working conditions, and provide the necessary security for our employees as well as Target.

These are not all inclusive, but represent the most important procedures which you must comply with.

1. No food or drink of any nature will be taken and/or consumed from the Snack Bar Restaurant areas.
2. All Maintenance supplies must be requisitioned before they are used.
3. No merchandise - damaged, or other - may be taken from the Store unless purchased through a checkout lane during business hours.
4. All lunch boxes, bags, purses, outer garments, etc. are subject to inspection by the Manager-On-duty or Merchandise Flow Manager before exiting the Store.
5. All employees must use only the main entrance when entering or exiting the store.
6. No employee may sign in or out for, or punch or alter another employee's time card.
7. Use of telephone is limited to Company business only.
8. Alcoholic beverages, illegal drugs, weapons and firearms are not permitted on Target property.
9. No person under the influence of alcoholic beverages or drugs is permitted onto Target property.
10. Willful or malicious damage to Target property will not be tolerated and restitution will be pursued.
11. Dishonesty in any form will not be tolerated.
12. Under no circumstances can any alarmed door be opened or overnight personnel be permitted to enter or leave the building without the presence of a Target Executive. An emergency exit door may be opened (after proper identification) for authorities, in the case of emergency situations such as fire or medical emergency.

13. Deliberately setting off an alarm may subject a person to a fine imposed by the City or Municipality as well as criminal charges and/or termination.
14. No person, other than approved crew members, are permitted into the Store during non-business hours.
15. Smoking is not permitted inside the building.

Any violation of the above stated policies will result in disciplinary action up to and including termination and/or prosecution; and/or termination of services. If you have any questions, at any time, as to the propriety of conduct, ask your Store Team Leader or Supervisor.

I have read the above and understand it. I have received a copy.

1-29-2001
Date

Bryan Funchlight
Signature
Delores Malaska
Witness

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EXHIBIT D

CERTIFICATION STATEMENT

I (contractor) Jim's Maintenance hereby certify that all my employees who will be working on the premises of Target Stores, have provided me with proper documentation indicating they are legally authorized to work in the United States.

I certify the above on this 29th day of January 2001.

By: Byron Finkelstein

Its: President

Notary

Manika Kation
My commission
expires Dec 4, 2002

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